

State of Hawaii – Department of Taxation
Does a Company Qualify for Hawaii Tax Incentives?

NOTE: This questionnaire is only a guide. It is not intended to be a definitive ruling.

Part I. “Qualified Research” (QR) — What business activity(ies) does the company perform?

Check the box(es) that describes the activity(ies) the company performs.

- ☐ **IRC § 41 Research and Development.** The company performs research as defined in Internal Revenue Code (IRC) § 41(d). In general, § 41 research and development is research that is directed at discovering information that is intended to eliminate uncertainty concerning the development or improvement of a business component and that employs an evaluative process generally capable of evaluating more than one alternative and fundamentally relying on principles of the physical or biological science, engineering, or computer science.
- ☐ **Development and design of computer software.** The company develops and designs computer software for ultimate commercial sale, lease, license or to be otherwise marketed, for economic consideration. With respect to the software's development and design, the business has substantial control and retains substantial rights to the resulting intellectual property.
- ☐ **Biotechnology.** The company is involved in research that adds to the fundamental knowledge of functional biological systems from the macro level to the molecular and subatomic levels for further application in the development of novel products, services, technologies, and subtechnologies.
- ☐ **Performing arts.** The company produces either (1) audio files, video files, audiovideo files, computer animation, and other entertainment products perceived by or through the operation of a computer; or (2) commercial television or film products for sale or license, and reuse or residual fee payments from these products.
- ☐ **Sensor and optic technologies.**
- ☐ **Ocean sciences.**
- ☐ **Astronomy.**
- ☐ **Nonfossil fuel energy-related technology.**

Indicate what percentage of the total business activities¹ of the company involve one or more of the activities checked above. _____%

Part II. Qualified High Technology Business (QHTB).

Does the business conduct more than 50% of its total activities in research that satisfies the requirements of one or more of the categories listed in Part I?

☐ Yes ☐ No

If you answered “Yes”, then you are representing that the company is a QHTB. As a QHTB the company may qualify for the exclusion for income from royalties and the exclusion for income from stock options. See Parts III and IV of this questionnaire.

If you answered “No”, skip Parts III and IV and continue with Part V.

¹ “Business activities” are measured by the cost of these activities, the time spent on these activities, or other consistently applied reasonable basis. This is based upon general principles in the income tax and general excise tax law.

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Part III. Income from Royalties Excluded (§235-7.3, HRS)

Royalty income and other income derived from patents, copyrights, or trade secrets developed and arising out of a QHTB received by the individual or QHTB that owns the patents, copyrights, or trade secrets may be excluded from Hawaii income tax.

Part IV. Income from Stock Options Excluded (§235-9.5, HRS)

All income earned and proceeds derived from stock options or stock (including stock issued through the exercise of stock options or warrants) from a QHTB, or from a holding company of a QHTB,² by an employee, officer, or director of the QHTB, or investor who qualifies for the high technology business investment tax credit in §235-110.9, HRS, may be excluded from Hawaii income tax. This exclusion is applicable to dividends from stock or stock received through the exercise of stock options or warrants, the receipt or the exercise of stock options or warrants, and income from the sale of stock, including stock issued through the exercise of stock options or warrants.

With respect to a partnership or a limited liability company treated as a partnership for income tax purposes, this exclusion is applicable only to the gain from the sale of membership interest units.

With respect to a sole proprietorship or a limited liability company treated as a sole proprietorship for income tax purposes, this exclusion is not applicable.

Part V. High Technology Business Investment Tax Credit (§§235-110.9, 241-4.8, and 431:7-209, HRS)

Any taxpayer subject to income tax, franchise tax, or insurance premium tax, may invest in an unlimited number of QHTBs per taxable year and claim a nonrefundable tax credit of up to \$2 million. The credit is graduated over five years (35% to 10%) from the date of investment for investments made through 2010. Some of the credit claimed will be recaptured from the taxpayer if the QHTB ceases to qualify as a QHTB.

1. Does the company employ or own capital or property, or maintain an office in Hawaii?
☐ Yes ☐ No
2. Is the company's combined percentages of all activities in Part I equal to more than 50% of its total business activities (see Part II of this questionnaire); and more than 75% of this QR is conducted in Hawaii?
☐ Yes ☐ No
3. Is more than 75% of the company's gross income derived from QR, provided that the income is received from:
 - a. Products sold from, manufactured in, or produced in Hawaii; or
 - b. Services performed in Hawaii?☐ Yes ☐ No

If you answered "Yes" to Question 1 **and** answered "Yes" to either Question 2 or Question 3, then you are representing that the company is a QHTB for purposes of this credit. Investments in a QHTB are eligible for this credit.

² "Holding company of a qualified high technology business" means any business entity that possesses: (1) At least eighty per cent of the total voting power of the stock or other interest; and (2) At least eighty per cent of the total value of the stock or other interest; in the qualified high technology business.

Part VI. Tax Credit for Research Activities (§235-110.91, HRS)

A QHTB (as defined in §235-110.9, HRS) subject to Hawaii's income tax law, whose activities meet the definition of "qualified research" found in Internal Revenue Code §41, may qualify for a 20% credit for research conducted in Hawaii during tax years 2000 through 2010. Unlike the federal credit, the Hawaii credit may be claimed whether or not research expenses increased from previous years. In addition, the 20% Hawaii credit is refundable (the federal credit is nonrefundable).

1. Did you represent that your company is a QHTB for purposes of the Hawaii High technology business investment tax credit (see Part V of this questionnaire)?

☐ Yes ☐ No

2. Does the company perform QR that consists of research and development as defined in IRC § 41(d) (see Part I of this questionnaire)?

☐ Yes ☐ No

3. Does the company conduct this QR in Hawaii?

☐ Yes ☐ No

If you answered "Yes" to questions 1, 2 and 3, then you are representing that the company is a QHTB performing qualified research (as defined in 26 U.S.C. §41) in Hawaii. A QHTB's research and development expenses for research conducted in Hawaii may qualify for the Hawaii tax credit for research activities.

Disclaimer

The conclusions reached are based solely upon the answers and representations you provided in this questionnaire. If it is later determined that the actual facts are other than as presented, the Department of Taxation will apply the law accordingly. The contents of this questionnaire may be subject to change, without notice, due to future laws or rules.

Please be advised that a comfort ruling is not a prerequisite to making a claim for any tax credit. Should you desire a comfort ruling, please complete the "Request for High Tech Comfort Ruling" form and submit it along with this questionnaire, an executed Form 848 (if applicable), a check for \$1,000 payable to "Director of Finance", and any other pertinent information to the:

Rules Office
State of Hawaii - Department of Taxation
P.O. Box 259
Honolulu, HI 96809-0259.

Regarding the comfort ruling fee, additional information is available in *Department of Taxation Announcement No. 2005-19*.